



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
FRANK EDWARD HESS AND FLORENCE HESS

Appearances:

For Appellants: Charles R. Lees, Certified Public
Accountant

For Respondent: Burl D. Lack, Chief Counsel;
Cleo M. Gray, Junior Counsel

O P I N I O N

This appeal is made by Frank Edward Hess and Florence Hess purportedly in accordance with Section-18593 of the Revenue and Taxation Code from assessments by the Franchise Tax Board of additional personal income tax in the amounts of \$452.43 and \$397.88 against each Appellant for the years 1949 and 1950, respectively.

On November 19, 1953, pursuant to Section 18583 et seq. of the Revenue and Taxation Code, the Franchise Tax Board mailed to Appellants, husband and wife, notices of proposed additional assessments in the amounts of \$941.79 and \$1,017.05 against each of them for the years 1949 and 1950, respectively. These notices were addressed to the Appellants at their home address. On the same day the Board mailed a similar notice to Mae M. Oury, a business associate of Frank Edward Hess, proposing assessments based upon the same facts. Miss Oury received her notice on or about November 20, 1953.

The Franchise Tax Board received no reply to the notices addressed to the Appellants until March 22, 1954, when letters of protest dated March 18, 1954, were received from each of them. The Appellants say that they did not receive their deficiency notices until March 12, 1954. The Franchise Tax Board, however, refused to act upon their letters of protest, taking the position the effective protests against the proposed additional assessments were required by Section 18590 of the Code to be filed within 60 days after the mailing of each deficiency notice.

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Meanwhile the Franchise Tax Board had before it the protest of Mae M. Oury filed on January 15, 1954, within the time allowed by Section 18590. After a hearing on her protest, held on May 10, 1954, the Franchise Tax Board revised the assessments against her and also, pursuant to Section 19131, cancelled a portion of the assessments against these Appellants. Miss Oury has appealed from the action of the Franchise Tax Board in accordance with Section 18593 of the Code. The Franchise Tax Board, however, contends that we do not have jurisdiction to consider the appeals of Mr. and Mrs. Hess,

The pertinent provisions of the Revenue and Taxation Code are as follows:

"Within 60 days after the mailing of each notice of additional tax proposed to be assessed the taxpayer may file with the Franchise Tax Board a written protest against the proposed additional tax, specifying in the protest the grounds upon which it is based." (Section 18590)

"If no protest is filed, the amount of the deficiency assessed becomes final upon the expiration of the 60-day period." (Section 18591)

Sections 18592 and 18593 provide for consideration of a protest by the Franchise Tax Board and for appeal to this Board from the action of the Franchise Tax Board on the protest.

It is plain from Section 18590 that the mailing date of the notice rather than the date of its receipt commences the running of the period within which a protest must be filed. There is no showing that the notices were improperly mailed or even that they were not delivered to the proper address. Any fault, so far as the record shows, must have been that of the taxpayers themselves in failing to provide for the proper receipt of their mail (see Pacific Gas and Electric Co. v. State Board of Equalization, 134 Cal. App. 2d 149; Theron C. Teel, 27 T.C. 375; United Telephone Co., 1 B.T.A. 450).

Under Section 18591, the assessments became final prior to the filing of the protest. The meaning of the word "final" may vary depending upon the context in which it appears (see First Federal Savings and Loan Association of Hollywood v. State Board of Control, 53 Cal. App. 2d 391). In this case, where the word appears in a series of provisions describing steps leading to appeal to this Board, it means that appeal

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to this Board under Section 18593 is foreclosed. The cancellation of tax by the Franchise Tax Board under Section 19131 did not give rise to a new right of appeal.

O R D E R

Pursuant to the views **expressed** in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Appeal of Frank Edward Hess and Florence Hess from assessments by the Franchise Tax Board of additional personal income tax in the amounts of \$452.43 and \$397.88 against each Appellant for the years 1949 and 1950, respectively, be and the same is hereby dismissed.

Done at Sacramento, California, this 17th day of February, 1959, by the State Board of Equalization,

Paul R. Leaks, Chairman

Geo. R. Reilly, Member

John W. Lynch, Member

Richard Nevins, Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary